

# ARKANSAS SUPREME COURT

No. CR 06-916

CLARENCE McCLENDON  
Petitioner

v.

HON. MARION HUMPHREY, CIRCUIT  
JUDGE  
Respondent

Opinion Delivered May 3, 2007

RESPONDENT'S REQUEST THAT  
PRO SE PETITION FOR WRIT OF  
MANDAMUS BE DENIED [CIRCUIT  
COURT OF PULASKI COUNTY, CR  
86-1284]

REQUEST DENIED.

## PER CURIAM

On August 16, 2006, petitioner Clarence McClendon, who was found guilty of capital murder and aggravated robbery in the Circuit Court of Pulaski County in 1987, filed in this court a pro se petition for writ of mandamus. Petitioner contended that the Honorable Marion Humphrey, Circuit Judge, had failed to act in a timely manner on a petition that he had filed on August 17, 2005, seeking to have his criminal conviction vacated. Respondent Humphrey responded to the petition and informed this court that the matter had been set for hearing.

Over the course of the next several months, the hearing date was reset several times, and on February 8, 2007, a deputy attorney general notified one of our staff attorneys that petitioner had retained counsel and that the matter had been passed until the attorney could review the file. On April 24, 2007, the respondent filed a supplemental response to the mandamus petition in which he averred that the deputy attorney general who is representing him with respect to the mandamus

action had been informed by the attorney for petitioner that the mandamus petition was not necessary to obtain a hearing or effect a decision on petitioner's petition to vacate sentence. For that reason, the respondent asks this court to deny the petition for writ of mandamus.

We decline to deny the mandamus petition. If petitioner does not desire to pursue the mandamus action, petitioner should file a motion in this court to dismiss it.

We note that this mandamus action has been pending here for approximately nine months. At this point, we will not issue the writ because it appears that the respondent has set petitioner's petition for hearing on several occasions and that at least some of the delay in the court's acting on the petition has been the result of the need for petitioner's attorney to prepare to represent him in the cause. Nevertheless, a final disposition should be made of the matter considering the fact that it has been pending since mid-2005, and respondent is urged to take whatever action is appropriate to conclude the proceeding.

Request denied.